

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
PIERCE COUNTY, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 726

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being an appeal of a \$100 civil penalty for an alleged smoke emission violation having come on regularly for hearing before the Pollution Control Hearings Board on the 6th day of January, 1975, and appellant Pierce County appearing through its chief civil deputy prosecutor, Robert J. Backstein, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney Keith D. McGoffin; and Board members present at the hearing being Walt Woodward and Chris Smith; and the Board having considered the sworn testimony, exhibits, records and files herein and arguments of counsel and having entered on the

1 9th day of January, 1975, its proposed Findings of Fact, Conclusions of  
2 Law and Order; and the Board having served said proposed Findings,  
3 Conclusions and Order upon all parties herein by certified mail, return  
4 receipt requested and twenty days having elapsed from said service, and

5 The Board having received no exceptions to said proposed Findings,  
6 Conclusions and Order; and the Board being fully advised in the premises;  
7 now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order, dated the 9th day of  
10 January, 1975, and incorporated by this reference herein and attached  
11 hereto as Exhibit A, are adopted and hereby entered as the Board's Final  
12 Findings of Fact, Conclusions of Law and Order herein.

13 DONE at Lacey, Washington this fourth day of February, 1975.

14 POLLUTION CONTROL HEARINGS BOARD

15 Chris Smith  
16 CHRIS SMITH, Chairman

17 Walt Woodward  
18 WALT WOODWARD, Member

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27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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Mr. Robert J. Backstein  
Chief Civil Deputy Prosecutor  
Pierce County Prosecutor's Office  
946 County-City Building  
Tacoma, Washington 98402

Mr. Keith D. McGoffin  
Burkey, Marsico, Rovai, McGoffin,  
Turner and Mason  
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Tacoma, Washington 98405

Puget Sound Air Pollution  
Control Agency  
410 West Harrison Street  
Seattle, Washington 98119

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POLLUTION CONTROL HEARINGS BOARD  
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PUGET SOUND AIR POLLUTION  
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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged smoke emission violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith) as a formal hearing in the Tacoma facility of the State Board of Industrial Insurance Appeals on January 6, 1975.

Appellant appeared through its chief civil deputy prosecutor, Robert J. Backstein; respondent through its counsel, Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 Counsel made closing arguments.

2 From testimony heard, exhibits examined and arguments considered,  
3 the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd  
7 Ex. Sess., has filed with this Board a certified copy of its Regulation I  
8 containing respondent's regulations and amendments thereto.

9 II.

10 Section 9.03(a)(2) of Regulation I makes it unlawful to cause or  
11 allow the emission of an air contaminant of opacity of greater degree  
12 than 40 percent density for more than three minutes in any one hour.  
13 Section 3.29 of Regulation I authorizes a civil penalty of not more than  
14 \$250 for each violation of Regulation I.

15 III.

16 On August 30, 1974, from the incinerator stack of the County-City  
17 Building, 930 Tacoma Avenue South, Tacoma, Pierce County, there was  
18 emitted for six consecutive minutes gray smoke of 60 percent opacity.  
19 The smoke was observed by one of respondent's inspectors, trained,  
20 experienced and certified as a smoke reader. He served Notice of  
21 Violation No. 10053 on appellant after making the observation.  
22 Subsequently, and in connection therewith, respondent served on appellant  
23 Notice of Civil Penalty No. 1735 in the sum of \$100, which is the subject  
24 of this appeal.

25 IV.

26 Earlier in August, 1974, this Board approved a Stipulated Order in  
27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER 2

1 a similar action between the two instant parties (PCHB No. 579). The  
2 stipulation called for appellant's designating only one person to be  
3 responsible for the incinerator, that a directive be issued and signs be  
4 posted to this effect and that the incinerator be locked or secured  
5 against its use by others than the designated operator. Appellant  
6 complied with these stipulations.

7 V.

8 A new incinerator, for which respondent issued a construction permit,  
9 was installed by appellant in 1974. It is equipped with an afterburner  
10 which, when operating, is designed to complete combustion of particulate  
11 emissions and eliminate smoke. To function, the afterburner must be  
12 activated by an electric switch. The afterburner does not function  
13 automatically when the incinerator is put into operation. It is possible  
14 for the incinerator to be functioning without the afterburner being in  
15 operation.

16 VI.

17 There was no testimony as to whether the afterburner was operating  
18 at the time of the incident cited in Notice of Violation No. 10053.

19 VII.

20 Any Conclusion of Law hereinafter stated which is deemed to be a  
21 Finding of Fact is adopted herewith as same.

22 From these Findings, the Pollution Control Hearings Board comes to  
23 these

24 CONCLUSIONS OF LAW

25 I.

26 Appellant was in violation of Section 9.03 of respondent's

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 Regulation I as cited in Notice of Violation No. 10053.

2 II.

3 While the Board sees little point in a civil penalty being paid  
4 by one taxpayer-supported governmental unit to another governmental unit,  
5 the Board believes the circumstances of this matter indicate that Notice  
6 of Civil Penalty No. 1735 should be sustained. A governmental unit, such  
7 as Pierce County, should be a leader in obeying air pollution regulations.  
8 The private sector can have little respect for those regulations if  
9 private and public sectors are not treated alike in the enforcement of  
10 clean air regulations. The fact that appellant is a contributing member  
11 of respondent's organization makes it all the more obvious that appellant  
12 should not be given special consideration. The penalty in this matter  
13 is reasonable.

14 III.

15 Any Finding of Fact herein stated which is deemed to be a Conclusion  
16 of Law is adopted herewith as same.

17 Therefore, the Pollution Control Hearings Board issues this

18 ORDER

19 The appeal is denied and the civil penalty of \$100 is sustained.

20 DONE at Lacey, Washington this 9th day of January, 1975.

21 POLLUTION CONTROL HEARINGS BOARD

22 Chris Smith  
23 CHRIS SMITH, Chairman

24 Walt Woodward  
25 WALT WOODWARD, Member

26 FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER